

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SKYLER LEE YEAGER, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CLOREND A RENE YEAGER,

Respondent-Appellant,

and

CARL DOUGLAS YEAGER,

Respondent.

In the Matter of SKYLER LEE YEAGER, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

CARL DOUGLAS YEAGER,

Respondent-Appellant,

and

CLOREND A RENE YEAGER,

Respondent.

Before: Kelly, P.J., and Markey and Smolenski, JJ.

UNPUBLISHED

June 19, 2007

No. 274904

Cass Circuit Court

Family Division

LC No. 05-000178-NA

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PER CURIAM.

In these consolidated appeals, respondents appeal from an order terminating their parental rights to the minor child pursuant to MCL 712A.19b(3)(c)(i) and (g). We reverse.

The child was made a temporary ward in October 2005, after respondents admitted that they were using and selling marijuana. The petition alleged drug abuse and lack of housing for both respondents and alleged that respondent mother had untreated mental health issues. The child had special needs. He was developmentally impaired and often had rages. A neurologist diagnosed the child with pariventricular leukomalacia in January 2006. Respondents' treatment plans required them to maintain negative drug screens and attend drug counseling, attend parenting classes, obtain employment, and obtain suitable housing. Respondent mother had the additional requirement that she remain compliant with her medications.

In May 2006, issues began to develop regarding whether respondents were properly bonded with the child. By this time, both respondents had made considerable progress with their treatment plans: they were drug-free, were each attending individual and couple's therapy, and regularly visited the child. The trial court nonetheless terminated respondents' parental rights, finding that respondents had only recently obtained independent housing, failed to take responsibility for how their past drug use affected their ability to parent, and were not properly bonded to the child. While there was some evidence in support of these allegations, the evidence did not rise to the level of clear and convincing. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

By the time of the termination hearing, respondent mother had complied with every aspect of the parent-agency agreement. The consensus among the witnesses was that respondents would have to maintain housing for a period of at least six months to prove their stability. Respondents gave plausible explanations for why it took them nearly a year to find housing. Respondent father was incarcerated for a period of time after the child was made a temporary ward. Respondents discovered that they did not qualify for subsidized housing because of their felony convictions. Both respondents obtained employment and were complying with the individual therapy requirements of the parent-agency agreement. While it may have taken too long for them to find housing, they were not credited for having done so. Aside from the fact that the apartment had some outside stairs that the worker believed could have been hazardous to the child, it was otherwise clean and appropriate.

Much was made of the fact that respondent mother failed to acknowledge how her past drug use affected her ability to parent. Specifically, reference was made to a report that the counselor Julie Reising prepared in October 2006, in which she stated that respondent mother believed that she had been a good parent even when she used drugs. Reising had worked with respondent mother since May 2006, and the two did not get along. Respondent mother found Reising to be "rude and confrontational," which, in turn, caused respondent mother to be very defensive. Additionally, respondent mother made many of her statements after the termination petition had been filed. Understandably, she was fearful, confrontational, and defensive, especially in light of the fact that she had been making significant progress. On the other hand, respondent mother had a positive working relationship with her therapist, Becky Katovsich, since January 2006. The two had a very open and honest relationship, and Katovsich believed that respondent mother was very sincere during their sessions. Respondent mother admitted to

Katovsich that her drug use caused her to be lethargic and, as a result, she was not the parent she wanted to be. Respondent mother often became tearful during sessions because of the guilt she felt. Respondent mother consistently and without fail passed every drug screen that she had been given for over a year. She also completed outpatient drug counseling. Fear that she would relapse because of the statements she made to Reising was speculative.

Finally, a great deal of testimony surrounded respondent mother's bond with the child. Again, this issue did not make itself known until May 2006, more than eight months after the child was made a temporary ward. The initial petition never mentioned any issues with bonding and attachment and focused mainly on the mother's drug use and ability to care for the child. For that reason, any evidence regarding attachment and bonding had to be legally admissible. *In re JK*, 468 Mich 202, 206; 661 NW2d 216 (2003).

Psychologist Dr. Susan Carter implied that the child's difficulties were the result of his upbringing rather than his neurological disorder. Incredibly, however, Dr. Carter admitted that she was completely unfamiliar with pariventricular leukomalacia. She based her opinion on the fact that the child had made strides during therapy. However, Dr. Carter admitted that the therapy sessions were with the child and his foster mother and that she never worked with the parents and the child. She observed only one visit, during which respondent mother was sleeping in the car. Admittedly, this did not leave a good impression on Dr. Carter, but no further attempts were made to attend a visit. Dr. Carter never observed the child and the mother together.

Respondent mother complied with the requirements of her parent-agency agreement and by all accounts was making considerable progress. Even her greatest detractor, Julie Reising, admitted that respondent mother attempted to improve her parenting at visits by increasing her eye contact and physical contact with the child during visits. As the Court in *In re JK* stated, while a "parent's failure to comply with the parent-agency agreement is evidence of a parent's failure to provide proper care and custody for the child. . . the parent's *compliance* with the parent-agency agreement is evidence of her ability to provide proper care and custody." *Id.* at 214. Further, "[i]f the agency has drafted an agreement with terms so vague that the parent remains 'unfit,' even on successful completion, then the agreement's inadequacies are properly attributable to the agency and cannot form the basis for the termination of parental rights." *Id.* at 214, n. 20.

If the evidence was not clear and convincing to terminate respondent mother's parental rights, it certainly was not sufficient to terminate respondent father's parental rights. He did not suffer from any mental illness, and bonding with the child was not a primary concern. Respondent father complied with his parent-agency agreement and by all accounts was making considerable progress. He was drug-free, he attended couple's therapy and individual therapy, he was employed, and he found appropriate housing. The testimony regarding respondent father's parenting abilities was positive.

The trial court focused on the failure to obtain independent housing sooner, his failure to complete the intensive outpatient substance abuse program, and his alleged failure to recognize how his past drug abuse affected his ability to parent the child. However, respondent father acknowledged that his prior drug use resulted in the loss of his child and he demonstrated a commitment to remain substance free. He tested negative for drugs for over a year. While he

dropped out of the IOP program, he re-enrolled in June 2006 and, by his counselor's account, was doing very well. Although there remained some concern with the father's failure to recognize his drug problem, it was clear that he was committed to remaining clean.

Reversed.

/s/ Kirsten Frank Kelly

/s/ Jane E. Markey

/s/ Michael R. Smolenski